



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
999 18<sup>TH</sup> STREET- SUITE 300  
DENVER, CO 80202-2466  
Phone 800-227-8917  
<http://www.epa.gov/region08>

2005 MAY 12 AM 11:16

FILED  
EPA REGION VIII  
HEARING CLERK

DOCKET NO.: CWA-08-2004-0005

IN THE MATTER OF:

BUFFALO FARMS SUPPLY, INC.

80 West Main Street

Buffalo, ND 58011

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

DATE

May 12, 2005

Alfred C. Smith  
Regional Judicial Officer

*Alfred C. Smith*

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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IN THE MATTER OF: )

Docket No. CWA-08-2004-0005

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Buffalo Farm Supply, Inc. )  
80 West Main Street )  
Buffalo, ND 58011 )

**CONSENT AGREEMENT**

Respondent. )

**AUTHORITY**

1. This Consent Agreement is entered into between Complainant United States Environmental Protection Agency Region 8 ("EPA") and Respondent Buffalo Farm Supply, Inc., ("Respondent") pursuant to section 311(b)(6)(B)(i) of the Clean Water Act ("the Act"), 33 U.S.C. § 1321(b)(6)(B)(i), which authorizes the EPA Administrator to issue civil penalties for violations of section § 311(j) of the Act, 33 U.S.C. § 1321(j), as amended by the Oil Pollution Act Amendments of 1990. This authority has been properly delegated to the undersigned EPA officials. Complainant and Respondent (hereafter referred to collectively as "the Parties"), by their undersigned representatives, hereby consent and agree as follows.

**FACTUAL AND PROCEDURAL BACKGROUND**

2. On November 17, 2003, Complainant issued Respondent an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") in the above-captioned action pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), for alleged violations of section 311(j) of the Act, 33 U.S.C. § 1321(j), and the oil pollution prevention

regulations set forth at 40 C.F.R. part 112. The alleged violations were identified at an onshore facility owned and/or operated by Respondent located at 80 West Main Street, Buffalo, North Dakota. The Complaint proposed a civil penalty for the alleged violations.

3. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

4. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

6. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a Final Order, this Consent Agreement applies to and is binding upon Complainant and Respondent, Respondent's officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 9 has been paid. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

7. Complainant has verified that Respondent is in compliance with the Act and the implementing regulations set forth at 40 C.F.R. part 112 for the facility named in this action.

8. Pursuant to section 311(b)(8) of the Act., 33 U.S.C. § 1321(b)(8), EPA determined that an appropriate civil penalty to settle all the above-captioned action is in the amount of Nine Thousand Five Hundred Dollars (\$9,500) after considering the seriousness of the

violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

9. Respondent consents and agrees to pay the amount of Nine Thousand Five Hundred Dollars (\$9,500) to resolve the violations alleged in the Complaint.

#### **TERMS OF SETTLEMENT**

10. Respondent consents to the issuance of the Consent Agreement and for the purposes of settlement to the payment of the above-cited civil penalty.

11. Respondent consents and agrees to pay the above-stated amount in four semi-annual payments over a two year period. Beginning not more than thirty (30) days after Respondent's receipt of a signed final order in this matter, Respondent shall pay the first semi-annual payment in the amount of Two Thousand Dollars (\$2,000), by remitting a corporate, cashier's or certified check, payable to the order of the "Oil Spill Liability Trust Fund" to:

Donna Inman  
Technical Enforcement Program (8ENF-UFO)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

The check shall reference the Respondent's name and address, and the EPA docket number of this action.

12. Respondent agrees to mail a copy of the check simultaneously to the following:

Tina Artemis, Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

and to:

Amy Swanson, Enforcement Attorney  
U.S. EPA Region 8 (8ENF-L)  
999 18th Street, Suite 300  
Denver, CO 80202-2466

13. Respondent agrees to make three additional, consecutive semi-annual payments, each in the amount of Two Thousand Five Hundred Dollars (\$2,500) and in the same manner as referenced above in Paragraph Nos. 11 and 12, in accordance with the following schedule:

2<sup>nd</sup> payment of \$2,500 is due and must be received by not later than 11/30/05;  
3<sup>rd</sup> payment of \$2,500 is due and must be received by not later than 05/30/06; and  
4<sup>th</sup> payment of \$2,500 is due and must be received by not later than 11/30/06

14. Respondent further agrees and consents that if it fails to pay the first penalty payment by the due date specified in paragraph no. 11 above, the full settlement amount of \$9,500 shall become due and owing by Respondent within thirty (30) days of receipt of written request by Complainant. In the event that Respondent fails to pay any of the subsequent three civil penalty payments referenced in paragraph no. 13 by their respective deadlines, the full outstanding penalty amount may become due and owing by Respondent if requested in writing by Complainant. Furthermore, interest on each civil penalty payment not received by EPA by its corresponding due date specified in paragraph nos. 11 and 13 above shall accrue from the date due until the date of receipt by EPA at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. A late payment charge of fifteen dollars (\$15.00) shall be imposed after the first 30 days that any of the civil penalty payments, or portions thereof, are overdue, with an additional charge of fifteen dollars (\$15.00) imposed for each subsequent 30-day period until the payments are made. If Respondent fails to make any of the four installment payments

by the due date specified in above paragraph nos. 11 and 13, Respondent shall pay interest of six percent (6%) per annum on any principal amount not paid within 90 days of the specified due date.

15. The penalty specified in paragraph 9 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

### **GENERAL PROVISIONS**

16. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

17. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

18. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.

19. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.

20. The Parties agree to bear their own costs and attorneys fees in connection with this matter.

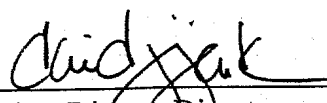
21. The Parties agree to forward this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.

22. This Consent Agreement, upon incorporation into a final order by the Regional

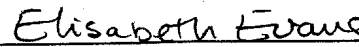
Judicial Officer and upon full payment of the agreed-upon amount by the Respondent, shall constitute a complete and full settlement of the specific violations alleged in the Complaints.

**SO CONSENTED AND AGREED TO:**

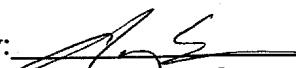
**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**  
Complainant.

By:   
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 4/25/05

By:   
Elisabeth Evans, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 4/25/05

By:   
Amy Swanson, Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: 4/26/05

**BUFFALO FARM SUPPLY, INC.**

Respondent.

By 

Ron Killoran, President

Date: 5-5-05



## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **BUFFALO FARM SUPPLY, INC., DOCKET NO.: CWA-08-2004-0005** was filed with the Regional Hearing Clerk on May 12, 2005.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on May 12, 2005, to:


Craig E. Johnson  
Johnson, Ramstad & Mottinger  
15 South Ninth Street  
Fargo, ND 58013

Commander  
Finance Center (OGR)  
U. S. Coast Guard  
1430 A Kristina Way  
Chesapeake, VA 23326

And hand-carried to:

Honorable Alfred C. Smith  
Regional Judicial Officer (8RC)  
U. S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

May 12, 2005

  
Tina Artemis  
Regional Hearing Clerk



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